

**Wittels  
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December 15, 2020

**Via ECF**

Honorable Katharine H. Parker  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: *Mahood v. Noom, Inc.*, No. 20 Civ. 3677 (LGS) (KHP)

Dear Judge Parker:

On behalf of Plaintiffs and the proposed Class, we write to update Your Honor regarding the parties' efforts to finalize the ESI protocol and to advise the Court that yesterday afternoon Plaintiffs sent Defendants a revised ESI protocol and are awaiting defense counsel's response to our request that the parties meet and confer to discuss any outstanding issues.

By way of brief background, Defendants incorrectly claimed in the parties' December 7, 2020 pre-conference submission that Defendants had prepared a revised ESI protocol "specifically reflecting the Court's rulings" and that Plaintiffs had "delayed for weeks in agreeing upon" this revised protocol. ECF No. 120 at 2. Based on these inaccurate assertions, Defendants asked that Your Honor "enter the ESI protocol attached hereto as Exhibit D." *Id.* As Plaintiffs' portion of the joint letter made clear, however, Plaintiffs had been occupied by extensive work on and updates to the Sedona Conference RFP chart and, in any event, Noom's revised ESI protocol did not accurately reflect Your Honor's guidance. *Id.* at 4.

Yesterday, Plaintiffs sent Defendants a revised ESI protocol that *inter alia* corrected numerous misinterpretations of the Court's rulings and restored terms that had been previously agreed upon by the parties but were omitted from the version Defendants submitted to the Court. We also sought Defendants' availability this week for a meet and confer.

Accordingly, Plaintiffs respectfully request that Your Honor not endorse the version of the ESI protocol Defendants submitted without Plaintiffs' approval and allow the parties time to work out any remaining differences. If the parties are unable to resolve their differences, the proper course is to bring any disputes to Your Honor's attention in advance of the next discovery conference on January 12.

Thank you for the Court's attention to this matter.

Respectfully submitted,

/s/ Steven L. Wittels  
Steven L. Wittels

cc: All counsel of record (via ECF)